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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/581,447

04/12/2007

Christian Funke

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2172

26111

7590

10/01/2008

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

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WASHINGTON, DC 20005

EXAMINER

KASTURI, SRIRAM

ART UNIT

PAPER NUMBER

1612

MAIL DATE

DELIVERY MODE

10/01/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/581,447

Applicant(s)

FUNKE ET AL.

Examiner

SRIRAM KASTURI

Art Unit

1612

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 8, 10 and 11 is/are pending in the application.
- 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 8 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S5108)
Paper No(s)/Mail Date 2-2-07
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-5, 7, 8, 10 and 11 are pending.

Election/Restrictions

Applicant's election with traverse of the reply filed on 7-16-08 is acknowledged. The traversal is on the ground(s) that claim 10 was not placed into a Group and is related to Group II directed to a method of using, as process of making a product and use of the product. Claim 10 is examined for prosecution. The applicant also argues that a product, a process specially adapted for the manufacture of said product, and a use of said product will be considered to have unity of invention and therefore will not place any undue burden. This is not found persuasive because the process of making is lacking any special technical feature, as a different insecticide mixture can be prepared by mixing an anthranilamide derivative with another insecticide or another compound with an extender and/or a surfactant as claimed by applicant. The requirement is still deemed proper and is therefore made FINAL.

Applicant has elected a specific compound from formula I (I-a-4), a specific insecticide flonicamid from group 2 (2-6) and an anthranilamide of formula II (II-1-4). These elected species are for composition drawn to claims 1-5, 7, 8 and 10.

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Claims 1-5, 7, 8, 10 and 11 are pending. Claim 11 is withdrawn as being drawn to non elected species. Claims 1-5, 7, 8, and 10 are under consideration.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-5, 7, 8, and 10 are rejected under 35 U.S.C. 102(a) as being anticipated by teachings of Lahm et al (WO 03/015518 A1).

Applicants claim a synergistically effective composition containing a compound (I-a-4) of formula I or flonicamid (2-6) of group II and compound (II-1-4) of formula II.

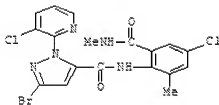
Lahm et al teach a method for controlling particular insect pests by applying their anthranilamide compounds. They also teach use of one or more other biologically active compounds or agents including insecticides, fungicides etc. including **flonicamid** (Page 96, lines 23-25 and 37).

Their teachings include anthranilamide derivative of following formula in their example 11 (Page 42, lines 18-20).

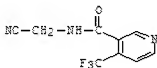
EXAMPLE 11

Preparation of 3-Bromo-N-[4-chloro-2-methyl-6-[(methylamino)carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide

Corresponds to following structure



Lahm et al teachings include use of one or more other biologically active compounds or agents including insecticides, fungicides etc. including **flonicamid** (Page 96, lines 23-25 and 37) of the following structure in their composition containing anthranilamide derivatives.



Their teachings include use of their compounds as a formulation or composition containing active ingredients 5-90 weight percent granules, tablets and powders. Though they do not teach the ratio of individual active ingredient, it will be at least a ratio of 1:1 (Page 89, line 18) and this includes compound of group 2 and anthranilamide of formula II ratio from 500:1 to 1:50 as claimed by applicant (Claim 8). Their teachings include suitable carrier comprising a solid

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diluent or surfactant (Page 89, lines 1-3). Thus their teachings include use of composition containing anthranilamide derivatives, insecticide and a surfactant.

Therefore Lahm et al teach an insecticide composition containing an insecticide (2-6) flonicamid and anthranilamide derivative of applicant formula II-1-4 and a surfactant as claimed by applicants.

Conclusion

Claims 1-5, 7, 8, and 10 are rejected. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SRIRAM KASTURI whose telephone number is (571)270-5263. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service

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Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sriram Kasturi/

Examiner

/Gollamudi S Kishore, Ph.D/

Primary Examiner, Art Unit 1612